

**PLAINTIFF BRUCE S. SHERMAN'S MEMORANDUM OF LAW
IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTION TO
EXCLUDE THE REPORT AND TESTIMONY OF JOHN D. FINNERTY**

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TABLE OF AUTHORITIES

Cases

<i>Am. Home Assur. Co. v. Merck & Co.</i> , 462 F. Supp. 2d 435 (S.D.N.Y. 2006).....	22, 23
<i>Amorgianos v. Nat’l R.R. Passenger Corp.</i> , 303 F.3d 256 (2d Cir. 2002).....	15
<i>Arista Records LLC v. Usenet.com, Inc.</i> , 608 F. Supp. 2d 409 (S.D.N.Y. 2009).....	22
<i>Astra Aktiebolag v. ANDRX Pharm., Inc.</i> , 222 F. Supp. 2d 423 (S.D.N.Y. 2002).....	23
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<i>Borawick v. Shay</i> , 68 F.3d 597 (2d Cir. 1995).....	4
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<i>Cedar Petrochemicals, Inc. v. Dongbu Hannong Chem. Co.</i> , 769 F. Supp. 2d 269 (S.D.N.Y. 2011).....	4
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<i>Discover Fin. Servs. v. Visa U.S.A., Inc.</i> , 582 F. Supp. 2d 501 (S.D.N.Y. 2008).....	15, 20, 21, 24
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<i>E.E.O.C. v. Bloomberg L.P.</i> , No. 07 CIV 8383, 2010 WL 3466370 (S.D.N.Y Aug. 31, 2010).....	24, 25

<i>Faulker v. Arista Records LLC</i> , 46 F. Supp. 3d 365 (S.D.N.Y. 2014).....	24
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<i>Gen. Elec. Co. v. Joiner</i> , 522 U.S. 136 (1997).....	21
<i>Glickenhause & Co. v. Household Int’l, Inc.</i> , 787 F.3d 408 (7th Cir. 2015)	2, 6, 7
<i>Gussack Realty Co. v. Xerox Corp.</i> , 224 F.3d 85 (2d Cir. 2000).....	23
<i>Houlihan v. Marriott Int’l, Inc.</i> , 2003 WL 22271206 (S.D.N.Y. Sept. 30, 2003).....	4
<i>In re Blech Sec. Litig.</i> , No. 94 CIV 7696, 2003 WL 1610775 (S.D.N.Y. Mar. 26, 2003)	4
<i>In re Flag Telecom Holdings, Ltd. Sec. Litig.</i> , 574 F.3d 29 (2d Cir. 2009).....	2, 5
<i>In re Fosamax Prods. Liab. Litig.</i> , 688 F. Supp. 2d 259 (S.D.N.Y. 2010).....	4, 21
<i>In re Methyl Tertiary Butyl Ether (MBTE) Prods. Liab. Litig.</i> , 593 F. Supp. 2d 549 (S.D.N.Y. 2008).....	9
<i>In re NYSE Specialists Sec. Litig.</i> , 260 F.R.D. 55 (S.D.N.Y. 2009)	14
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<i>In re Vivendi Universal, S.A. Sec. Litig.</i> , 605 F. Supp. 2d 586 (S.D.N.Y. 2009).....	6
<i>In re Williams Sec. Litig.</i> , 558 F.3d 1130 (10th Cir. 2009)	8

<i>Lentell v. Merrill Lynch & Co. Inc.</i> , 396 F.3d 161 (2d Cir. 2005).....	5, 6
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<i>Linde v. Arab Bank, PLC</i> , 922 F. Supp. 2d 316 (E.D.N.Y. 2013)	23
<i>Malletier v. Dooney & Bourke, Inc.</i> , 525 F. Supp. 2d 558 (S.D.N.Y. 2007).....	22
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<i>RMED Int’l, Inc. v. Sloan’s Supermarkets, Inc.</i> , 2000 WL 310352 (S.D.N.Y. Mar. 24, 2000), <i>aff’d</i> , No. 94 CIV. 5587, 2000 WL 420548 (S.D.N.Y. Apr. 18, 2000)	7
<i>Royal Ins. Co. of Am. v. Joseph Daniel Constr., Inc.</i> , 208 F. Supp. 2d 423 (S.D.N.Y. 2002).....	25
<i>Schleicer v. Wendt</i> , 618 F.3d 679 (7th Cir. 2010)	6
<i>United States v. Dukagjini</i> , 326 F.3d 45 (2d Cir. 2003).....	4
<i>United States v. Hatfield</i> , 2014 WL 7271616 (E.D.N.Y. 2014).....	6
<i>United States v. Mulder</i> , 273 F.3d 91 (2d Cir. 2001).....	23
<i>United States v. Rosario</i> , No. 09-CR-415-2, 2014 WL 6076364 (S.D.N.Y. Nov. 14, 2014).....	9
<i>WeddingChannel.Com, Inc. v. The Knot, Inc.</i> , 2005 WL 165286 (S.D.N.Y. Jan. 26, 2005)	4
<i>Zaremba v. Gen Motors Corp.</i> , 360 F.3d 355 (2d Cir. 2004).....	9

Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC,
571 F.3d 206 (2d Cir. 2009).....4, 18

Rules and Statutes

Fed. R. Evid. 7024, 15

Secondary Sources

David Tabak, “Inflation and Damages in a Post-Dura World,” National Economic
Research Associates, Inc. (NERA), September 15, 200717

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Intentionally Omitted

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